

## 803 CMR: DEPARTMENT OF CRIMINAL JUSTICE INFORMATION SERVICES

### 803 CMR 2.00: CRIMINAL OFFENDER RECORD INFORMATION (CORI)

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#### 2.01: Purpose and Scope

- (1) 803 CMR 2.00 is issued in accordance with M.G.L. c. 6, §§ 167A and 172; and M.G.L. c. 30A.
- (2) 803 CMR 2.00 sets forth the establishment and use of the iCORI system to access Criminal Offender Record Information (CORI). 803 CMR 2.00 further sets forth procedures for accessing CORI for the purpose of evaluating applicants for employment or professional licensing, as well as CORI complaint procedures.
- (3) 803 CMR 2.00 applies to all users of the iCORI system including employers, governmental licensing authorities, and individuals with criminal history.
- (4) Nothing contained in 803 CMR 2.00 shall be interpreted to limit the authority granted to the Criminal Record Review Board (CRRB) or to the Department of Criminal Justice Information Services (DCJIS) by the Massachusetts General Laws.

#### 2.02: Definitions

As used in 803 CMR 2.00, the following words and phrases shall have the following meanings:

Advocate. An individual authorized to act on a subject's behalf to obtain the subject's CORI for the purpose of assisting the subject with employment, housing or other purposes authorized by DCJIS.

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Apostille. A form of authentication issued by the Secretary of the Commonwealth to documents for use in countries that participate in the Hague Convention of 1961.

Consumer Reporting Agency (CRA). Any person or organization which, for monetary fees, dues, or on a cooperative, nonprofit basis, regularly engages in whole, or in part, in the practice of assembling or evaluating consumer, criminal history, credit, or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

Criminal Justice Agency (CJA). A Massachusetts agency which performs as its principal function activities relating to crime prevention, including research or the sponsorship of research; the apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal offenders; or the collection, storage, dissemination or usage of criminal offender record information.

Criminal Record Review Board (CRRB). A statutorily-created board within the Department of Criminal Justice Information Services (DCJIS) that reviews complaints and investigates incidents involving allegations of violations of the laws governing CORI, M.G.L. c. 6, §§ 167A and 172; and 803 CMR 2.00.

Department of Criminal Justice Information Services (DCJIS). The Commonwealth agency statutorily designated to provide a public safety information system and network to support data collection, information sharing and interoperability for the Commonwealth's criminal justice and law enforcement community; to oversee the authorized provision of Criminal Offender Record Information (CORI) to the non-criminal justice community; to provide support to the Criminal Record Review Board, to operate the Firearms Records Bureau; and to provide and technically support the Victim Notification Registry for the victims of crime.

Disabled Person. An individual with an intellectual disability, as defined by M.G.L. c. 123B, § 1, or who is otherwise mentally or physically disabled and, as a result of such mental or physical disability, is wholly or partially dependent on others to meet daily living needs.

Elderly Person. An individual who is 60 years of age or over.

Employment Applicant. An individual who has applied for employment, who meets the requirements for the position for which the individual is being screened for criminal history by an employer. Employment applicant as referenced in 803 CMR 2.00 shall also include volunteer applicants.

Evaluative Information. Records, data, or reports regarding individuals charged with a crime and compiled by criminal justice agencies which appraise mental condition, physical condition, extent of social adjustment, rehabilitative progress, and the like, and which are primarily used in connection with bail, pre-trial or post-trial release proceedings, sentencing, correctional and rehabilitative planning, probation, or parole.

Housing Applicant. An individual who applies to rent or lease housing, including market rate and subsidized housing.

iCORI. The internet-based system used in the Commonwealth to access CORI and to obtain self-audits.

Intelligence Information. Records and data compiled by a criminal justice agency for the purpose of criminal investigation, including reports of informants, investigators, or other persons, or from any type of surveillance associated with an identifiable individual. Intelligence information shall also include records and data compiled by a criminal justice agency for the purpose of investigating a substantial threat of harm to an individual, or to the order or security of a correctional facility.

Legally Authorized Designee. Any person authorized to submit and receive CORI on behalf of a requestor. For purposes of 803 CMR 2.00, "legally authorized designee" shall be synonymous with "legally designated representative."

2.02: continued

Legally Designated Representative. Any person authorized to submit and receive CORI on behalf of a requestor. For purposes of 803 CMR 2.00, "legally designated representative" shall be synonymous with "legally authorized designee."

Licensing Applicant. An otherwise qualified individual who meets all other requirements for the license for which the individual is being screened for criminal history by a governmental licensing agency.

Open Access to CORI. The level of Criminal Offender Record Information (CORI) access available to any member of the general public upon production of a subject's correct name and date of birth.

Person. A natural person, corporation, association, partnership, or other legal entity.

Requestor. A person, other than a law enforcement or criminal justice agency official, submitting a request for Criminal Offender Record Information (CORI) to the Department of Criminal Justice Information Services (DCJIS).

Required Access to CORI. The level of Criminal Offender Record Information (CORI) access available to requestors who are authorized or required by statute, regulation, or accreditation requirement to obtain CORI.

Self-audit. An inquiry made by a subject or a legally authorized designee to obtain a log of all queries to the Department of Criminal Justice Information Services (DCJIS) by any individual or entity for the subject's Criminal Offender Record Information (CORI), but excluding any information relative to any query conducted by a law enforcement or criminal justice agency official.

Standard Access to CORI. The level of Criminal Offender Record Information (CORI) access available to any requestor, or any requestor's legally designated representative, to evaluate: current and prospective employees, including full-time, part-time, contract, or internship employees or volunteers; applicants for rental or lease of housing; volunteers for services; and licensing applicants for a professional or occupational license issued by a state or municipal entity.

Subject. An individual for whom a request for Criminal Offender Record Information (CORI) is submitted to the Department of Criminal Justice Information Services (DCJIS).

2.03: Criminal Offender Record Information (CORI) Inclusions and Exclusions

(1) CORI shall be limited to the information recorded as the result of the initiation of criminal proceedings or any consequent related proceedings regarding individuals having attained the age of 17.

(2) If a person younger than 17 years old is adjudicated as an adult, CORI shall include information relating to that adjudication.

(3) CORI shall include fingerprints, photographs, and other identifying data that is recorded as the result of the initiation of a criminal proceeding.

(4) For purposes of 803 CMR 2.00, the initiation of criminal proceedings is the point when a criminal investigation is sufficiently complete that the investigating officer takes actions toward bringing a specific suspect to court.

2.03: continued

- (5) CORI shall not include:
- (a) information regarding criminal offenses or acts of delinquency committed by any individual before the individual attained the age of 17 unless the individual was adjudicated as an adult;
  - (b) photographs, fingerprints, or other identifying data of an individual used for investigative purposes, provided the individual is not identified;
  - (c) evaluative information;
  - (d) statistical and analytical reports and files in which individuals are not directly or indirectly identifiable;
  - (e) intelligence information;
  - (f) information regarding any offenses which are not punishable by incarceration;
  - (g) public records as defined in M.G.L. c. 4, § 7(26);
  - (h) daily police logs;
  - (i) decisions of the Parole Board;
  - (j) published records of public court or administrative proceedings;
  - (k) published records of public judicial, administrative, or legislative proceedings;
  - (l) federal criminal record information; and
  - (m) anything otherwise excluded by law.

2.04: iCORI Registration

- (1) A member of the general public may register for an iCORI account to request the user's own CORI, to request Open Access to CORI, or to request a self-audit.
- (a) To register for an iCORI account, a user must provide identifying information as required by DCJIS.
  - (b) To complete registration for an iCORI account a user must agree to all iCORI terms and conditions.
  - (c) A registration fee may be required.
- (2) An employer may register for an iCORI account to screen current employees or employment applicants, including paid, intern, or volunteer positions.
- (a) To register for an iCORI account, an employer must provide:
    - 1. identifying information regarding the individual user and the business required by DCJIS; and
    - 2. information regarding the purpose for requesting CORI, including any statutory, regulatory, or accreditation requirements that mandate CORI or criminal history screening.
  - (b) To complete registration for an iCORI account as an employer, the individual user must also complete training and agree to all iCORI terms and conditions.
  - (c) A registration fee may be required.
- (3) A governmental licensing agency may register for an iCORI account to screen current license holders or licensing applicants for professional or occupational licenses.
- (a) To register for an iCORI account, a licensing agency must provide:
    - 1. identifying information regarding the individual user and the agency required by DCJIS; and
    - 2. information regarding the purpose for requesting CORI, including any statutory, regulatory, or accreditation requirements that mandate CORI or criminal history screening.
  - (b) To complete registration for an iCORI account as an agency, the individual user must also complete training and agree to all iCORI terms and conditions.
  - (c) A registration fee may be required.
- (4) A CRA may register for an iCORI account to access CORI for a client who would meet the requirements of registration for an iCORI account. Regulation applicable to CRA registration is pursuant to 803 CMR 11.00: *Consumer Reporting Agency*.

2.04: continued

(5) A landlord, property management company, real estate agent, or public housing authority may register for an iCORI account to access CORI to evaluate housing applicants. Regulation applicable to landlord, property management company, real estate agency, and public housing authority registration is pursuant to 803 CMR 5.00: *Criminal Offender Record Information (CORI) - Housing*.

(6) All iCORI registrations shall expire after one calendar year. After expiration, the iCORI registrant shall renew its registration before accessing additional CORI.

(a) For a user re-registering as an entity other than an individual member of the general public, the user must again complete the iCORI training and agree to all iCORI terms and conditions.

(b) A registration fee may be required.

(7) DCJIS shall assess a fee for each request for CORI or self-audit according to a fee structure established by the Secretary of Public Safety and Security and shall establish rules for the waiver of a fee or portion thereof for such other persons as it deems appropriate, pursuant to M.G.L. c. 6, § 172A.

No fee shall be assessed for a request made by a victim of a crime or a witness or family member of a homicide victim, all as defined in M.G.L. c. 258B, § 1, or by any local, state or federal government entity.

2.05: Levels of Access to Criminal Offender Record Information (CORI)

(1) There shall be three different levels of access to CORI. The level of access to which a requestor is entitled shall depend upon who the requestor is and also upon whether a statute, regulation, or accreditation requirement authorizes or requires the requestor to obtain a certain level of CORI.

(2) The different levels of access to CORI shall be:

- (a) Required Access to CORI;
- (b) Standard Access to CORI; and
- (c) Open Access to CORI.

(3) Required Access to CORI is available only to requestors that are authorized or required by statute, regulation, or accreditation requirement to obtain CORI to screen employees, interns, volunteers, or professional licensing applicants.

(a) Required Access to CORI may also be available to those requestors screening applicants for the rental or leasing of housing and are required by a statutory, regulatory, or accreditation provision to obtain CORI.

(b) Required Access to CORI shall include four different levels of access depending on the language of the statutory, regulatory, or accreditation requirement that mandates obtaining CORI.

1. Required 1 Access to CORI shall include access to:

- a. all pending criminal charges, including cases continued without a finding of guilt, until they are dismissed;
- b. all misdemeanor convictions and felony convictions dating from the subject's 17<sup>th</sup> birthday;
- c. information relating to those offenses for which the subject was adjudicated as an adult while younger than 17 years old; and
- d. all convictions for murder, voluntary manslaughter, involuntary manslaughter, and sex offenses, as defined by M.G.L. c. 6, § 178, punishable by a term of incarceration in state prison, unless sealed.

2. Required 2 Access to CORI shall include access to:

- a. all pending criminal charges, including cases continued without a finding of guilt, until they are dismissed;
- b. all misdemeanor convictions and felony convictions dating from the subject's 17<sup>th</sup> birthday;
- c. information relating to those offenses for which the subject was adjudicated as an adult while younger than 17 years old;

## 2.05: continued

- d. information regarding charged criminal offenses that did not result in a conviction, such as cases that were dismissed, cases in which a *nolle prosequi* was entered by the Commonwealth, cases in which the subject was found not guilty, and cases in which a continuation without a finding of guilt has been dismissed; and
  - e. all convictions for murder, voluntary manslaughter, involuntary manslaughter, and sex offenses, as defined by M.G.L. c. 6, § 178, punishable by a term of incarceration in state prison, unless sealed.
3. Required 3 Access to CORI shall include access to:
    - a. all pending criminal charges, including cases continued without a finding of guilt, until they are dismissed;
    - b. all misdemeanor convictions and felony convictions dating from the subject's 17<sup>th</sup> birthday;
    - c. information relating to those offenses for which the subject was adjudicated as an adult while younger than 17 years old;
    - d. information regarding charged criminal offenses that did not result in a conviction, such as cases that were dismissed, cases in which a *nolle prosequi* was entered by the Commonwealth, cases in which the subject was found not guilty, and cases in which a continuation without a finding of guilt has been dismissed;
    - e. all information regarding juvenile offenses, including pending charges; and
    - f. all convictions for murder, voluntary manslaughter, involuntary manslaughter and sex offenses, as defined in M.G.L. c. 6, § 178, punishable by a term of incarceration in state prison, unless sealed.
  4. Required 4 Access to CORI shall include access to:
    - a. all pending criminal charges, including cases continued without a finding of guilt, until they are dismissed;
    - b. all misdemeanor convictions and felony convictions dating from the subject's 17<sup>th</sup> birthday;
    - c. information relating to those offenses for which the subject was adjudicated as an adult while younger than 17 years old;
    - d. information regarding charged criminal offenses that did not result in a conviction, such as cases that were dismissed, cases in which a *nolle prosequi* was entered by the Commonwealth, cases in which the subject was found not guilty, and cases in which a continuation without a finding of guilt has been dismissed;
    - e. all information regarding juvenile offenses, including pending charges;
    - f. information regarding criminal offenses that have been sealed; and
    - g. all convictions for murder, voluntary manslaughter, involuntary manslaughter and sex offenses, as defined in M.G.L. c. 6, § 178, punishable by a term of incarceration in state prison, unless sealed.

(4) Standard Access to CORI is available to employers, landlords, property management companies, real estate agents, public housing authorities, and governmental licensing agencies to screen current and prospective employees, including full-time, part-time, contract, and internship employees or volunteers; volunteers for services; tenants; or licensing applicants for a professional or occupational license issued by a state or municipal entity.

- (a) Standard Access to CORI shall include access to:
  1. all pending criminal charges, including cases continued without a finding of guilt until they are dismissed;
  2. all misdemeanor convictions for five years following the date of disposition or date of release from incarceration, whichever is later;
  3. all felony convictions for ten years following the date of disposition or date of release from incarceration, whichever is later; and
  4. all convictions for murder, voluntary manslaughter, involuntary manslaughter, and sex offenses, as defined in M.G.L. c. 6, § 178, punishable by a term of incarceration in state prison, unless sealed, including information relating to those offenses for which the subject was adjudicated as an adult while younger than 17 years old.
- (b) If a subject has been convicted of a misdemeanor, or has been released from custody for a misdemeanor conviction, within five years of the date of a Standard Access to CORI request, then the CORI that is provided to the requestor will include all adult convictions dating from the subject's 17<sup>th</sup> birthday and, if the subject was adjudicated as an adult while younger than 17 years old, information relating to those offenses.

2.05: continued

(c) If a subject has a felony conviction, or has been released from custody for a felony conviction, within ten years of the date of a Standard Access to CORI request, then the CORI that is provided to the requestor will include all adult convictions dating from the subject's 17<sup>th</sup> birthday and, if the subject was adjudicated as an adult while younger than 17 years old, information relating to those offenses.

(5) Open Access to CORI is Available to all Members of the General Public.

(a) Open Access to CORI shall include access to:

1. misdemeanor convictions for which the disposition date or incarceration release date, whichever is later, has occurred within one year of the date of the CORI request;
2. felony convictions for which the disposition date or incarceration release date, whichever is later, has occurred within two years of the date of the CORI request;
3. felony convictions punishable by five or more years in state prison provided however, that such convictions shall only be available for ten years following the date of disposition or date of release from incarceration, whichever is later; and
4. all convictions for murder, voluntary manslaughter, involuntary manslaughter and sex offenses, as defined in M.G.L. c. 6, § 178, punishable by a term of incarceration in state prison, unless sealed, including information relating to those offenses for which the subject was adjudicated as an adult while younger than 17 years old.

(b) Any member of the general public may obtain Open Access to CORI by registering for an iCORI account, or by requesting a paper CORI form from DCJIS.

(c) In order to use Open Access to CORI to obtain the CORI of another individual, a requestor shall submit the individual's name and date of birth.

1. Open Access to CORI search results shall be based only on the exact name and date of birth.
2. DCJIS shall return a "no available CORI" result if the information submitted does not exactly match information contained in the CORI database.
3. If the subject has used additional names or dates of birth, a requestor may submit additional Open Access to CORI requests with that information.

2.06: Access to an Individual's Own Criminal Offender Record Information (CORI)

(1) An individual may request a copy of the individual's own CORI by registering for an iCORI account.

(2) If an individual does not have access to the internet, the individual may request a copy of the individual's own CORI from DCJIS.

(3) If an individual requires CORI to obtain apostille authentication from the Office of the Secretary of the Commonwealth, an additional fee may be required.

2.07: Special Categories for Criminal Offender Record Information (CORI) Access

(1) An elderly person or disabled person seeking to screen employment applicants who may provide assistance within the home of the elderly or disabled person shall be permitted to obtain CORI to screen these employment applicants using the DCJIS Elderly/Disabled Assistant CORI Request Form.

(a) A legally designated representative may also obtain CORI for this purpose on behalf of an elderly person or disabled person.

(b) A requestor using the Elderly/Disabled Assistant CORI Form shall receive Required 2 Access to CORI which includes:

1. all pending criminal charges, including cases continued without a finding of guilt, until they are dismissed;
2. all misdemeanor convictions and felony convictions dating from the subject's 17<sup>th</sup> birthday;
3. information relating to those offenses for which the subject was adjudicated as an adult while younger than 17 years old;

2.07: continued

4. information regarding charged criminal offenses that did not result in a conviction, such as cases that were dismissed, cases in which a *nolle prosequi* was entered by the Commonwealth, cases in which the subject was found not guilty, and cases in which a continuation without a finding of guilt has been dismissed; and
  5. all convictions for murder, voluntary manslaughter, involuntary manslaughter and sex offenses, as defined in M.G.L. c. 6, § 178, punishable by a term of incarceration in state prison, unless sealed.
- (c) A requestor using the Elderly/Disabled Assistant CORI Form shall not be subject to the same rules as other employers regarding steps to take before making an adverse decision based on CORI, set forth in 803 CMR 2.17.
- (2) A requestor who wishes to obtain CORI beyond what is available via Open Access to CORI may contact DCJIS to request such access. Pursuant to M.G.L. c. 6, § 172(a)(6), the DCJIS commissioner may provide access to CORI to persons other than those entitled to obtain access, if the commissioner finds that such dissemination to such requestor serves the public interest. Upon such a finding, the commissioner shall also determine the extent of access to CORI necessary to sustain the public interest.
- (3) An attorney seeking to obtain a client's CORI may register for an iCORI account and submit a CORI request.
- (a) The attorney shall provide required identifying information, as well as identifying information regarding the client.
  - (b) An attorney seeking to obtain a non-client's CORI, beyond what is available via Open Access to CORI, for litigation purposes shall submit a valid, signed court order directly to DCJIS.
- (4) An advocate helping a client obtain services may obtain the client's CORI on the client's behalf.
- (a) An advocate may obtain a client's CORI by registering for an iCORI account and submitting a CORI request.
  - (b) The advocate shall provide identifying information required by DCJIS, as well as identifying information regarding the client.
  - (c) The advocate shall affirm, under the penalties of perjury, that the advocate has the client's authorization to obtain the CORI.

2.08: Prohibition Against Requiring a Subject to Provide Own Criminal Offender Record Information (CORI)

Pursuant to M.G.L. c. 6, § 178, an individual or organization screening an employment applicant, licensing applicant, or housing applicant is prohibited from requiring an applicant to produce a copy of the applicant's own CORI.

2.09: Requirements for Employers and Governmental Licensing Agencies to Request Criminal Offender Record Information (CORI)

- (1) Prior to submitting a CORI request, an employer or governmental licensing agency shall:
  - (a) submit a CORI Acknowledgement Form for each subject to be checked;
  - (b) verify the identity of the subject;
  - (c) obtain the subject's signature on the CORI Acknowledgement Form; and
  - (d) sign and date the CORI Acknowledgement Form certifying that the subject was properly identified.
- (2) To complete the CORI Acknowledgement Form, the subject shall provide:
  - (a) all names that have been used by the subject or by which the subject has been known; and
  - (b) any different name or date of birth for the subject that the subject is aware appears in the CORI database.



2.09: continued

- (3) An employer or governmental licensing agency shall verify a subject's identity by examining a government-issued identification. Acceptable types of government-issued identification are:
  - (a) a state-issued driver's license;
  - (b) a state-issued identification card with a photograph;
  - (c) a passport; and
  - (d) a military identification.
- (4) If a subject does not have an acceptable government-issued identification, an employer or governmental licensing authority shall verify the subject's identity by other forms of documentation as determined by DCJIS.
- (5) If an employer or governmental licensing agency is unable to verify a subject's identity and signature in person, the subject may submit a completed CORI Acknowledgement Form acknowledged by the subject before a notary public.
- (6) An employer or governmental licensing agency shall submit the subject's name, date of birth, and, if available, the last six digits of the subject's social security number.
- (7) To retrieve CORI from the iCORI system, a subject's name, date of birth, and partial social security number as submitted by the employer or governmental licensing agency must match the information in the iCORI database exactly.
- (8) If a subject has additional names or dates of birth, the employer or governmental licensing agency may submit additional requests.
- (9) For employers and governmental licensing agencies, CORI Acknowledgment Forms shall be valid for one year from the subject's having signed the form or until the conclusion of a subject's employment, whichever comes first.
  - (a) A requestor may submit a new request for CORI within one year of the subject's having signed the original CORI Acknowledgment Form as long as the requestor provides written notice to the subject at least 72 hours before submitting the request.
  - (b) Failure to provide such written notice to the subject of an otherwise authorized CORI request shall be considered a violation of 803 CMR 2.00.
  - (c) If a subject objects to the new request for CORI, the CORI Acknowledgment Form, that was executed for such a purpose, shall become invalid.
- (10) Nothing in 803 CMR 2.00 shall be construed to prohibit an employer or governmental licensing agency from making an adverse employment or licensing decision on the basis of a subject's objection to a request for CORI.
- (11) If a subject's professional license expires or is revoked, a subject's CORI Acknowledgment Form shall become invalid.
- (12) CORI Acknowledgement forms must be retained by the requestor for a minimum of one year from the date of the subject's signature.

2.10: Delivery of Criminal Offender Record Information (CORI) Results

- (1) Where fully automated, criminal history records will be returned to the requestor electronically. Otherwise, a manual search of the criminal history record shall be conducted and a response will be delivered upon completion of the search.
- (2) CORI requested electronically through iCORI may be viewed through the requestor's iCORI account.
- (3) CORI requested by paper submission shall be sent to the requestor by first-class mail.

2.11: Storage and Retention of Criminal Offender Record Information (CORI)

- (1) Hard copies of CORI shall be stored in a separate locked and secure location, such as a file cabinet. Employers and governmental licensing agencies shall limit access to the locked and secure location to employees who have been approved by them to access CORI.
- (2) Electronically-stored CORI shall be password protected and encrypted. Employers and governmental licensing agencies shall limit password access to only those employees who have been approved by them to access CORI.
- (3) CORI shall not be stored using public cloud storage methods.
- (4) Each employer or governmental licensing agency shall not retain CORI for longer than seven years from the date of employment or volunteer service, or from the date of the final employment or licensing decision of the requestor regarding the subject, whichever occurs later.

2.12: Destruction of Criminal Offender Record Information (CORI)

- (1) Each employer or governmental licensing agency shall destroy hard copies of CORI by shredding or otherwise before disposing of CORI.
- (2) Each employer or governmental licensing agency shall destroy electronic copies of CORI by deleting them from the hard drive on which they are stored and from any system used to back up the information before disposing of CORI.
- (3) Each employer or governmental licensing agency shall appropriately clean all information by electronic or mechanical means before disposing of or repurposing a computer used to store CORI.

2.13: Required Dissemination of Criminal Offender Record Information (CORI) by an Employer or Governmental Licensing Agency

- (1) Each employer and governmental licensing agency shall provide a copy of the CORI information or other criminal history information and the source of other criminal history information regarding a subject to the subject:
  - (a) before asking the subject any questions regarding the subject's criminal history; and
  - (b) before making an adverse employment or licensing decision based on the subject's CORI.
- (2) Each employer or governmental licensing agency that is overseen, regulated, or supervised by a governmental entity shall, upon request, disseminate CORI to that governmental entity's staff.

2.14: Permissive Dissemination of Criminal Offender Record Information (CORI) by an Employer or Governmental Licensing Agency

- (1) An employer or governmental licensing agency may disseminate CORI to the subject.
- (2) If an employer or governmental licensing agency is a party to a complaint or legal action as a result of any decision based on CORI, the employer or governmental licensing agency may disseminate CORI to an administrative agency or court for the purpose of defending its decision.
- (3) An employer or governmental licensing agency may disseminate CORI to its staff who the employer or governmental licensing agency has authorized to request, receive, or review CORI for the purposes of evaluating the subject's application for employment or licensing.

2.15: Criminal Offender Record Information (CORI) Policy Requirement for Certain Requestors

- (1) Any employer or governmental licensing agency that annually conducts five or more criminal background investigations, whether CORI is obtained from DCJIS or any other source, shall maintain a written CORI policy, which must meet the minimum standards of the DCJIS model CORI policy.

2.15: continued

- (2) DCJIS shall maintain a model CORI policy on a DCJS website.
- (3) A CORI policy may be developed and maintained regardless of the number of CORI requests conducted.

2.16: Requirement to Maintain a Secondary Dissemination Log

- (1) Following dissemination of any CORI outside of the employer or governmental licensing agency's organization, the employer or governmental licensing agency shall record such dissemination in a secondary dissemination log.
- (2) The secondary dissemination log must include:
  - (a) the subject's name;
  - (b) the subject's date of birth;
  - (c) the date and time of dissemination;
  - (d) the name of the person to whom the CORI was disseminated along with the name of the organization for which the person works, if applicable; and
  - (e) the specific reason for dissemination.
- (3) The secondary dissemination log may be maintained electronically or on paper.
- (4) Secondary dissemination log entries shall be maintained for at least one year.
- (5) A secondary dissemination log shall be subject to audit by DCJIS.

2.17: Adverse Employment Decision Based on Criminal Offender Record Information (CORI)

Before taking adverse action on an employment applicant's application for employment based on the employment applicant's CORI, an employer shall:

- (1) comply with applicable federal and state laws and regulations;
- (2) notify the employment applicant in person, by telephone, fax, or electronic or hard copy correspondence of the potential adverse employment action;
- (3) provide a copy of the employment applicant's CORI to the employment applicant;
- (4) provide a copy of the employer's CORI Policy, if applicable;
- (5) identify the information in the employment applicant's CORI that is the basis for the potential adverse action;
- (6) provide the employment applicant with the opportunity to dispute the accuracy of the information contained in the CORI;
- (7) provide the employment applicant with a copy of DCJIS information regarding the process for correcting CORI; and
- (8) document all steps taken to comply with 803 CMR 2.17.

2.18: Adverse Employment Decision Based on Criminal History Information Received from a Source Other than Department of Criminal Justice Information Services (DCJIS)

Before taking adverse action on an employment applicant's application for employment based on the employment applicant's criminal history information that was received from a source other than DCJIS, an employer shall:

- (1) comply with applicable federal and state laws and regulations;

2.18: continued

- (2) notify the employment applicant in person, by telephone, fax, or electronic or hard copy correspondence of the potential adverse employment action;
- (3) provide a copy of the employment applicant's criminal history information to the employment applicant including the source of the other criminal history information;
- (4) provide a copy of the employer's CORI Policy, if applicable;
- (5) provide the employment applicant with the opportunity to dispute the accuracy of the criminal history information;
- (6) provide the employment applicant with a copy of DCJIS information regarding the process for correcting criminal records; and
- (7) document all steps taken to comply with these requirements.

2.19: Adverse Licensing Decision Based on Criminal Offender Record Information (CORI)

- (1) Before taking adverse action on a licensing applicant's application for licensing based on the licensing applicant's CORI, a governmental licensing agency shall:
  - (a) comply with applicable federal and state laws and regulations;
  - (b) notify the licensing applicant in person, by telephone, fax, or electronic or hard copy correspondence of the potential adverse licensing action;
  - (c) provide a copy of the licensing applicant's CORI to the licensing applicant;
  - (d) identify the information in the licensing applicant's CORI that is the basis for the potential adverse action;
  - (e) provide the licensing applicant with a copy of DCJIS information regarding the process for correcting CORI; and
  - (f) document all steps taken to comply with these requirements.
- (2) The governmental licensing agency must provide the licensing applicant with information regarding an appeal process, including the opportunity to dispute the accuracy of the information contained in the CORI.

2.20: Adverse Licensing Decision Based on Criminal History Information Received From a Source Other than Department of Criminal Justice Information Services (DCJIS)

- (1) Before taking adverse action on a licensing applicant's application for licensing based on the licensing applicant's criminal history information received from a source other than DCJIS, a governmental licensing agency shall:
  - (a) comply with applicable federal and state laws and regulations;
  - (b) notify the licensing applicant in person, by telephone, fax, or electronic or hard copy correspondence of the potential adverse licensing action;
  - (c) provide a copy of the licensing applicant's criminal history information received from a source other than DCJIS to the licensing applicant including the source of the other criminal history information;
  - (d) provide the licensing applicant with a copy of DCJIS information regarding the process for correcting CORI; and
  - (e) document all steps taken to comply with 803 CMR 2.20.
- (2) The governmental licensing agency must provide the licensing applicant with information regarding an appeal process, including the opportunity to dispute the accuracy of the information contained in the CORI.

2.21: Use of a Consumer Reporting Agency (CRA) to Make Employment Decisions

- (1) An employer may use the services of a Consumer Reporting Agency (CRA) to request CORI regarding an employment applicant. *See also 803 CMR 11.00: Consumer Reporting Agency.*

2.21: continued

- (a) Before a CRA can request CORI from DCJIS on an employer's behalf, the employer shall:
    - 1. notify the employment applicant, in writing and in a separate document consisting solely of such notice, that a consumer report may be used in the employment decision making process; and
    - 2. obtain the employment applicant's separate written authorization to conduct background screening before asking a CRA for the report regarding the subject. An employer shall not substitute the CORI Acknowledgement Form for this written authorization.
  - (b) An employer shall also provide required information to the CRA before requesting CORI through a CRA.
    - 1. The employer shall certify to the CRA that the employer is in compliance with the Federal Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681.
    - 2. The employer shall not misuse any information in the report in violation of federal or state laws or regulations.
    - 3. The employer shall provide accurate identifying information for the employment applicant to the CRA and the purpose for which the subject's CORI is being requested.
- (2) Before taking adverse action on an employment applicant's application based on the employment applicant's CORI received from a CRA who obtained it from the DCJIS the employer shall:
- (a) provide the employment applicant with a pre-adverse action disclosure that includes a copy of the employment applicant's consumer report and a copy of *A Summary of Your Rights Under the Fair Credit Reporting Act*, published by the Federal Trade Commission and obtained from the CRA, by meeting the employment applicant in person, or by telephone, by electronic communication, by fax, or by hard copy correspondence;
  - (b) notify the employment applicant in person, by telephone, fax or electronic or hard copy, correspondence of the potential adverse employment action;
  - (c) provide a copy of the CORI to the employment applicant;
  - (d) provide a copy of the employer's CORI Policy, if applicable, to the employment applicant;
  - (e) identify the information in the employment applicant's CORI that is the basis for the potential adverse decision;
  - (f) provide the employment applicant with an opportunity to dispute the accuracy of the information contained in the CORI; and
  - (g) provide the employment applicant with a copy of the DCJIS information regarding the process for correcting a criminal record;
  - (h) document all steps taken to comply with 803 CMR 2.21(2).
- (3) If an employer obtains criminal history from a CRA that obtained it from a source other than DCJIS and the employer is inclined to make an adverse employment decision based on that criminal history, the employer shall:
- (a) provide the employment applicant with a pre-adverse action disclosure that includes a copy of the employment applicant's consumer report and a copy of *A Summary of Your Rights Under the Fair Credit Reporting Act*, published by the Federal Trade Commission and obtained from the CRA, by meeting the employment applicant in person, by telephone, by electronic communication, by fax, or by hard copy correspondence;
  - (b) provide a copy of the criminal history to the employment applicant;
  - (c) provide a copy of the employer's CORI Policy to the employment applicant, if applicable;
  - (d) provide the employment applicant with an opportunity to dispute the accuracy of the criminal history information;
  - (e) provide the employment applicant with a copy of the DCJIS information regarding the process for correcting a criminal record; and
  - (f) document all steps taken to comply with 803 CMR 2.21(3).

2.22: Audits by Department of Criminal Justice Information Services (DCJIS)

- (1) Requests for CORI are subject to audit by DCJIS.

2.22: continued

- (2) Each employer and governmental licensing agency who requests CORI shall respond to, and participate in, audits conducted by DCJIS.
  - (a) Failure to cooperate with, or to respond to, an audit may result in immediate revocation of CORI access.
  - (b) If CORI access is revoked for failure to cooperate with, or to respond to, a DCJIS audit, the employer or governmental licensing agency shall not obtain CORI through a CRA.
  - (c) DCJIS may restore CORI access upon completion of its audit.
  - (d) DCJIS may also initiate a complaint with the CRRB against any employer or governmental licensing agency for failure to respond to, or to participate in, an audit.
- (3) During a DCJIS audit, the employer or governmental licensing agency shall provide, or allow DCJIS audit staff to inspect, certain CORI-related documents, including, but not limited to:
  - (a) CORI Acknowledgement Forms;
  - (b) secondary dissemination logs;
  - (c) the organization's CORI Policy; and
  - (d) documentation of any adverse employment or licensing decisions based on CORI.
- (4) During an audit, DCJIS audit staff shall assess the employer or governmental licensing agency's compliance with statutory and regulatory requirements, including, but not limited to:
  - (a) if the employer or governmental licensing agency properly registered for the appropriate level of CORI access and provided correct registration information;
  - (b) if the employer or governmental licensing agency is properly completing and retaining CORI Acknowledgement Forms;
  - (c) if the employer or governmental licensing agency is requesting CORI in compliance with 803 CMR 2.00;
  - (d) if the employer or governmental licensing agency is properly storing and safeguarding CORI;
  - (e) if the employer or governmental licensing agency is properly maintaining a secondary dissemination log;
  - (f) if the employer or governmental licensing agency is screening only those individuals permitted by law; and
  - (g) if the employer or governmental licensing agency has a CORI policy that complies with DCJIS requirements.
- (5) Audit results may be published.
- (6) If DCJIS auditors determine that the employer or governmental licensing agency is not in compliance with statutory or regulatory CORI requirements, DCJIS may initiate a complaint against the organization with the CRRB.
- (7) DCJIS may also refer the audit results to state or federal law enforcement agencies for criminal investigation.

2.23: Confidentiality and Privacy of Criminal Offender Record Information (CORI)

- (1) A non-law enforcement requestor shall not request an individual's CORI without that individual's authorization, except when requesting Open Access to CORI.
- (2) Restrictions on access to, and dissemination of, an individual's CORI shall terminate upon the individual's death. Upon request, and with a valid death certificate or reasonable proof of death as determined by DCJIS, criminal justice agencies shall be permitted to release CORI regarding a deceased individual.

2.24: Criminal Offender Record Information (CORI) Self-audit

- (1) A self-audit is not a public record.
- (2) To obtain a self-audit, an individual may register for an iCORI account or may request a self-audit from DCJIS via mail, using a request form developed by DCJIS.

2.24: continued

- (3) An individual shall have a hard copy request form for a self-audit notarized.
- (4) An individual may request one free self-audit request every 90 days.
- (5) To request a self-audit, an individual shall provide required identifying information.

2.25: Inaccurate Criminal Offender Record Information (CORI)

- (1) DCJIS shall provide a process for investigating and correcting inaccurate CORI.
- (2) DCJIS shall provide details on current policies and procedures for correcting inaccurate CORI upon request.

2.26: Criminal Offender Record Information (CORI) Complaints

- (1) DCJIS shall provide a process for individuals to file complaints including, but not limited to:
  - (a) improper access to or dissemination of CORI;
  - (b) failure of an organization to follow regulations, including 803 CMR 2.00, 803 CMR 5.00: *Criminal Offender Record Information (CORI) - Housing* and 803 CMR 11.00: *Consumer Reporting Agencies*.
  - (c) identity theft resulting in inaccurate CORI.
- (2) DCJIS shall screen all complaints to determine whether there is sufficient information to initiate a complaint investigation.
- (3) After investigation, if DCJIS determines that there is sufficient information, DCJIS will schedule either a CORI complaint hearing before a subcommittee of the CRRB or a CORI complaint conference before a complaint hearing officer. Whether a complaint goes to conference or a hearing shall depend upon the complexity of the complaint.
  - (a) All parties shall receive at least 30 days notice of the scheduled date, time, and place of the hearing or conference from DCJIS by electronic communication or first class mail.
  - (b) Both the complainant and the respondent shall also receive a complaint packet that contains the complaint, response, and any other additional relevant information obtained by DCJIS.
  - (c) Before the conference or hearing, DCJIS shall issue notices and summonses to compel attendance of both the complainant and respondent. DCJIS may issue additional notices and summonses to compel the attendance of witnesses and to require the production of books, records, or documents.
  - (d) Prior to the conference or hearing, either party may request that a summons be issued to secure the attendance of an in-state witness.
    - 1. The party requesting a summons shall provide, in writing, the reasons why a requested witness' testimony is relevant to the proceeding.
    - 2. Upon receipt of this information, should the complaint hearing officer or subcommittee chairperson determine testimony of the requested witness is not relevant, the party's request for a witness summons may be denied.
    - 3. The party requesting a summons must also provide the name and address of the witness at least 21 days before the conference or hearing.
  - (e) Prior to a conference or hearing, the respondent may admit to the alleged violation and agree to pay a civil penalty and agree to any other sanctions as issued by the CRRB.
- (4) The complaint conference shall be an adjudicatory hearing that takes place before a complaint hearing officer who conducts the conference and determines its course, including in what order and the manner in which the parties may offer information. Depending on the subject matter, CORI complaint conferences may be open to the public.
  - (a) The hearing officer shall administer oaths to the parties, ensure all relevant issues are considered, and request, receive, and make part of the conference record all evidence determined necessary to decide the issues raised in the complaint and the response.

2.26: continued

- (b) All CORI complaint conferences shall be subject to the provisions of M.G.L. c. 30A, which governs adjudicatory hearing procedures.
  - (c) All CORI complaint conferences shall be subject to the informal rules of adjudicatory procedure under 801 CMR 1.02: *Informal/Fair Hearing Rules*.
  - (d) All complaint conferences shall be electronically recorded.
  - (e) At the complaint conference, the complainant and the respondent may present testimony and evidence on their own behalf.
  - (f) Following the complaint conference, the complaint hearing officer shall issue a recommendation on which the CRRB shall vote at its next formal meeting. Board findings and orders may be publicly posted. However, all identifying information of the complainant will be redacted prior to such posting.
- (5) A CORI complaint hearing shall be an adjudicatory hearing that takes place before a CRRB subcommittee presided over by a subcommittee chairperson who conducts the hearing and determines its course, including in what order and the manner in which the parties may offer information. Complaint hearings shall not be open to the public.
- (a) The subcommittee chairperson shall administer oaths to the parties, ensure all relevant issues are considered, and request, receive, and make part of the hearing record all evidence determined necessary to decide the issues raised in the complaint and the response.
  - (b) All CORI complaint hearings shall be subject to the provision of M.G.L. c. 30A, which governs adjudicatory hearing procedures.
  - (c) All CORI complaint hearings shall be subject to the informal rules of adjudicatory procedure under 801 CMR 1.02: *Informal/Fair Hearing Rules*.
  - (d) All CORI complaint hearings shall be electronically recorded.
  - (e) At the complaint hearing, the complainant and the respondent may present testimony and evidence on their own behalf.
  - (f) Following a complaint hearing, the subcommittee shall issue a written "Decision and Order" stating whether there was a violation of the CORI law or these regulations and what civil penalty, if any, will be assessed. Board findings and orders may be publicly posted. All identifying information of the complainant shall be redacted prior to such posting.
- (6) If any person involved in a hearing before the CRRB is hearing impaired, speech impaired, or cannot speak or understand the English language, that person shall be entitled to have translation services present at a conference or hearing.
- (a) In order to obtain the services of a translator, the person shall notify DCJIS upon the filing of a complaint or upon providing a complaint response.
  - (b) A person may also provide a translator. If a person chooses to provide a translator, the person shall notify DCJIS as soon as reasonably possible prior to the conference or hearing. At that time, the person shall provide the qualifications of the translator to the satisfaction of DCJIS. DCJIS must approve the translator prior to the conference or hearing.
  - (c) If a person requests a translator pursuant to 803 CMR 2.00, DCJIS shall arrange for the services of such a translator and shall notify the complainant and respondent of the identity of the translator within a reasonable amount of time prior to the conference or hearing.
  - (d) The CRRB may order any person failing to appear after a request for translation services to pay the costs of the translator.

2.27: The Criminal Record Review Board

- (1) The Criminal Record Review Board (CRRB) shall be an 18-member Board, created pursuant to M.G.L. c. 6, § 168(a), that shall meet regularly to review complaints and investigate incidents involving allegations of statutory and regulatory CORI violations.
- (2) The Board shall also consult upon the adoption of rules and regulations for the implementation, administration and enforcement of M.G.L. c. 6, § 168A, and the collection, storage, access, dissemination, content, organization and use of criminal offender record information by requestors.
- (3) The following 13 members of the CRRB are statutorily designated and shall serve *ex officio*:
  - (a) the Secretary of Public Safety and Security or designee, who serves as the CRRB chair;



2.27: continued

- (b) the Attorney General or designee;
  - (c) the Secretary of Labor and Workforce Development or designee;
  - (d) the Chair of the Massachusetts Sentencing Commission or designee;
  - (e) the Chief Counsel for the Committee for Public Counsel Services or designee;
  - (f) the Chair of the Parole Board or designee;
  - (g) the Commissioner of Correction or designee;
  - (h) the Commissioner of Probation or designee;
  - (i) the Commissioner of Youth Services or designee;
  - (j) the Colonel of State Police or designee;
  - (k) the president of the Massachusetts District Attorneys Association or designee;
  - (l) the president of the Massachusetts Sheriffs' Association or designee; and
  - (m) the president of the Massachusetts Chiefs of Police Association or designee.
- (4) The remaining five CRRB members shall be appointed by the governor for three year terms to fulfill certain statutory designations:
- (a) one shall represent private users of CORI;
  - (b) one shall be a victim of crime;
  - (c) one shall have experience in the areas of workforce development or ex-offender rehabilitation; and
  - (d) two shall be persons with experience in issues relating to personal privacy.
- (5) The CRRB shall have the authority to:
- (a) dismiss a CORI complaint;
  - (b) appoint a Board member, hearing officer, or three member subcommittee to conduct hearings or conferences of CORI violation complaints;
  - (c) issue summonses to compel the attendance of witnesses and require their testimony at hearings or conferences;
  - (d) require the production of books, records, and documents for hearings or conferences;
  - (e) administer oaths at hearings or conferences;
  - (f) order any party who fails to appear at a conference or hearing, after a request for translation services, to pay the costs of the translator;
  - (g) remand a complaint presented to it for additional fact finding;
  - (h) review complaints and investigate any incidents alleging violations of M.G.L. c. 6, §§ 168 through 178A;
  - (i) hear complaints and investigate any incidents alleging violations of board rules and regulations;
  - (j) revoke access to CORI;
  - (k) impose civil fines of up to \$5,000 for each knowing CORI violation; and
  - (l) refer any complaint to state or federal criminal justice agencies for criminal investigation.

2.28: Severability

If any provision of 803 CMR 2.00, or the application thereof, is held to be invalid, such invalidity shall not affect the other provisions or the application of any other part of 803 CMR 2.00 not specifically held invalid and, to this end, the provisions of 803 CMR 2.00 and various applications thereof are declared to be severable.

REGULATORY AUTHORITY

803 CMR 2.00: M.G.L. c. 6, §§ 167A and 172; and M.G.L. c. 30A.

NON-TEXT PAGE